

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 17, 2016

v

MARYANN LEAL CASTORENA,

Defendant-Appellant.

No. 325786
Ottawa Circuit Court
LC No. 14-038482-FC

Before: RIORDAN, P.J., and SAAD and MARKEY, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of first-degree premeditated murder, MCL 750.316(1)(a); conspiracy to commit first-degree premeditated murder, MCL 750.157a and MCL 750.316(1)(a); solicitation of first-degree premeditated murder, MCL 750.157b(2); and lying to a peace officer, MCL 750.479c(2)(d). She was sentenced to life imprisonment without parole for her first-degree premeditated murder and conspiracy to commit first-degree premeditated murder convictions, 180 to 540 months' imprisonment for her solicitation of first-degree premeditated murder conviction, and 17 to 48 months' imprisonment for her lying to a peace officer conviction. We affirm.

I. FACTUAL BACKGROUND

This case arises out of the murder of Jose Hernandez in January 2014. At the time, defendant was a beneficiary of Hernandez's life insurance policies as well as the 401k account, stock option plan, and life insurance policy that Hernandez received through his job. In total, defendant was in a position to receive over \$1.2 million upon Hernandez's death.

In 2005, defendant and Hernandez began dating, and they later lived together along with other family members. In June 2012, Hernandez applied for a \$750,000 20-year term life insurance policy through a Farm Bureau Insurance agency where defendant worked. He named his niece as the sole beneficiary of the policy, but he asked the insurance agent about the possibility of changing the beneficiary at a later date to his future wife and children. This insurance policy went into effect on July 20, 2012.

Later, in November 2012, defendant, Hernandez, and defendant's sons, Jamie Hinojosa and Gabriel Delarosa, were living in an apartment on Ambertrace Lane in Holland, Michigan ("the Ambertrace apartment").¹ At that time, defendant was introduced to one of Hinojosa's friends, Anthony Delagarza, who was an initiated member of the Latin Kings, a local gang. Delagarza was living with his brother, but he wanted to move out because he was "hanging around with a lot of gang members" at his brother's apartment and hoped to "turn [his] life around." Learning of this, defendant invited Delagarza to live with her, Hernandez, and her sons at the Ambertrace apartment. Delagarza moved into the unit shortly thereafter, and he was "jumped out" of the Latin Kings, meaning that he was assaulted in order to be allowed to leave the gang, in December 2012.

In February 2013, Hernandez listed defendant as the only beneficiary of his employee stock options plan, his 401k plan, and his life insurance policy issued through his employer. A month later, in March 2013, defendant asked Delagarza if he knew of anyone who could "total out the [2012 Nissan Maxima] so the insurance would pay out" because they were having trouble paying for the insurance on the vehicle each month. Hernandez was with defendant when she discussed this matter with Delagarza, but defendant was the one who spoke while Hernandez stood nearby. Delagarza told defendant that he did not know anyone who would do that, but he could do it. Defendant then told him, "I'll pay you about \$1,000 for this job." Delagarza testified that the "cover story" that defendant developed for the arson involved defendant staying at her sister's house—as her sister was in the midst of a custody dispute with her ex-husband—and making it appear that the ex-husband committed the arson. At trial, Delagarza confirmed that he did, in fact, blow up the vehicle using Molotov cocktail bombs while it was parked outside the home of defendant's sister. He also explained in detail the way in which the arson plot was executed, including defendant's presence at her sister's home during the commission of the crime. In addition, documentation regarding the insurance claim filed on the vehicle, testimony from a police officer who responded to the scene of the arson, and a video of the burning vehicle were admitted at trial. After the incident, defendant paid Delagarza for his involvement in the crime.

In April 2013, approximately \$40,000 was paid to Hernandez for the total loss of the 2012 Nissan Maxima. Later in April, Hernandez changed the designated beneficiary on his Farm Bureau life insurance policy so that his niece would receive 60% of the proceeds and defendant would receive 40%.

In July 2013, Delagarza moved out of the Ambertrace apartment. That month, he also traveled to California. While he was visiting his godparents during the trip, he accidentally videotaped himself on his cellular telephone while discussing the fact that defendant hired him to burn the Maxima, and he described the way he did the crime. Around the same time, defendant

¹ At the time, defendant and Hernandez held a renter's insurance policy for the apartment through Farm Bureau, and Hernandez held an automobile insurance policy for a 2012 Nissan Maxima.

also moved to California. At the end of July 2013, she married another man in Nevada, which she never disclosed to Hernandez.

A few days after the marriage, defendant temporarily returned to Michigan to help Delarosa move in with one of defendant's sisters.² During her visit, she reconnected with Delagarza, requesting that he meet with her the following weekend. During the meeting, defendant told Delagarza that she had a new "job" for him to do and that it would pay out "really, really good." Delagarza testified at trial that defendant explained that she would "have [Hernandez] take out a \$75,000 life insurance policy," and that Delagarza would be paid \$50,000 for murdering him. They then discussed how the murder would be accomplished, and Delagarza agreed to complete the homicide. Subsequently, defendant returned to California.

The murder did not occur until several months later.³ In the meantime, Hernandez applied for a second 20-year term life insurance policy in the amount of \$750,000 through Farm Bureau, under which defendant was the sole beneficiary.⁴ Additionally, during this period of time, Hernandez continued to refer to defendant as his girlfriend.

In November 2013, defendant moved back to Holland, Michigan, with her new husband. Upon their arrival, defendant and her husband lived in her sister's home. Hinojosa continued to live with Hernandez in the Ambertrace apartment despite his mother's return to Michigan. Defendant met with Delagarza multiple times in November and December 2013 to discuss the murder plan. Then, around Christmas, while Hinojosa was still living with Hernandez, defendant began visiting the Ambertrace apartment on a regular basis to sort through her possessions and move them out of the residence.

On January 2, 2014, Hernandez paid the premium on his second life insurance policy through Farm Bureau, which extended the coverage for three months. The next day, he changed the beneficiary designation on his first life insurance policy, making his niece and defendant equal beneficiaries.

In the evening on January 5, 2014, after meeting with Delagarza earlier in the day, defendant borrowed a family member's Chevy Avalanche and drove Delagarza to the Ambertrace apartment for the commission of the murder. Delagarza hid in the parking lot until Hernandez exited the apartment building and murdered him using a ball joint remover with a broken prong. Delagarza then ran back to the Avalanche, where defendant was waiting. Immediately thereafter, defendant drove Delagarza to a predetermined location to throw away the weapon.

² Hinojosa continued to live with Hernandez.

³ During one of these meetings, defendant showed Delagarza a note that had logistical details concerning the planned homicide. This note was later found inside a bag that was located in defendant's room at her sister's house.

⁴ Hernandez told the insurance agent not to tell defendant about this policy, and the agent testified at trial that he never told her about it.

II. STANDARD OF REVIEW

We “review[] for an abuse of discretion the trial court’s decision to admit or exclude evidence.” *People v Lane*, 308 Mich App 38, 51; 862 NW2d 446 (2014). “[A] trial court abuses its discretion when its decision falls outside the range of principled outcomes or when it erroneously interprets or applies the law.” *Id.* (footnotes omitted). However, “[w]e review de novo the preliminary questions of law surrounding the admission of evidence, such as whether a rule of evidence bars admitting it.” *Id.*

III. ANALYSIS

Defendant’s sole issue on appeal is that the trial court abused its discretion under MRE 404(b) when it admitted evidence of defendant and Delagarza’s prior conspiracy to commit arson in March 2013. We disagree.

Evidence of a defendant’s “other crimes, wrongs, or acts” is generally inadmissible to demonstrate the defendant’s propensity to act in conformity with those acts. MRE 404(b)(1); *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). However, other acts evidence may be admissible under MRE 404(b) for other, noncharacter purposes, such as to establish “proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material[.]” MRE 404(b)(1); *Starr*, 457 Mich at 495-496. Notably, MRE 404(b) is “a rule of inclusion,” and the list of proper, noncharacter purposes under the rule is nonexclusive. *Starr*, 457 Mich at 496.

As such, evidence regarding a defendant’s prior crimes, wrongs, or acts is admissible under MRE 404(b) if (1) it is offered for a proper, noncharacter purpose, (2) it is relevant to a factual issue of consequence at trial, and (3) the probative value of the evidence is not substantially outweighed by the potential for unfair prejudice under MRE 403. *People v Sabin (After Remand)*, 463 Mich 43, 55-56; 614 NW2d 888 (2000), citing MRE 104(b), MRE 402, MRE 403, MRE 404(b), and *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). In addition, upon the admission of other acts evidence, “the trial court, upon request, may provide a limiting instruction under MRE 105.” *Sabin*, 463 Mich at 56.

Here, the prosecution argued that evidence concerning the arson conspiracy was admissible for the following purposes: (1) revealing an ongoing conspiratorial relationship between defendant and Delagarza; (2) providing proof of defendant’s motive; and (3) providing proof of defendant’s common plan, scheme, or system in carrying out both offenses, which both included effectuating a crime in order to collect insurance proceeds. Proof of motive and proof of a common scheme, plan, or system in performing an act are proper purposes enumerated under MRE 404(b). While proof of a “conspiratorial relationship” is not a listed purpose under MRE 404(b), the list is not exhaustive, *Sabin*, 463 Mich at 56, and it is clear that defendant’s conspiratorial relationship with Delagarza was a component of the common plan, scheme, or system in committing the prior arson and the murder at issue in this case. Therefore, evidence of the nature of defendant and Delagarza’s relationship was offered for a proper, nonpropensity purpose.

But it is not enough to merely recite a proper noncharacter purpose. *People v Crawford*, 458 Mich 376, 387; 582 NW2d 785 (1998). Under the second prong of the test, the prosecution must demonstrate that the prior act evidence is relevant to a noncharacter purpose by “explaining how the evidence relates to the recited purposes.” *Id.* Stated differently, to show relevance, the prosecution must establish “a relationship between the evidence and a material fact at issue that must be demonstrated by reasonable inferences that make a material fact at issue more probable or less probable than it would be without the evidence.”⁵ *Id.* at 387. “If the prosecutor fails to weave a logical thread linking the prior act to the ultimate inference [which is probative of an ultimate issue in the case], the evidence must be excluded, notwithstanding its logical relevance to character.” *Id.* at 390-391. See also *People v Mardlin*, 487 Mich 609, 615-616; 790 NW2d 607 (2010) (“Evidence relevant to a noncharacter purpose is *admissible* under MRE 404(b) *even if* it also reflects on a defendant’s character. Evidence is *inadmissible* under [MRE 404(b)(1)] *only* if it is relevant solely to the defendant’s character or criminal propensity.”). “The relationship of the elements of the charge, the theories of admissibility, and the defenses asserted governs what is relevant and material.” *Sabin*, 463 Mich at 69.

Evidence of the prior conspiracy to commit arson was highly relevant in this case and the ultimate inference from the evidence actually was probative of something other than defendant’s propensity to commit the crimes at issue. She was charged with conspiracy to commit murder, a specific-intent crime that requires a showing of “both the intent to combine with others and the intent to accomplish the illegal objective.” *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001). Defendant’s theory of the case was that Delagarza committed the murder and was blaming her so that he could receive a reduced sentence under a favorable plea agreement. In raising this theory, defendant contested the existence of any conspiracy to murder Hernandez and disputed the fact that she had any involvement in the homicide. Evidence that defendant was involved in another conspiracy with Delagarza to commit a crime in order to obtain insurance proceeds was logically relevant to the proper purposes of showing (1) a financial intent to enter into an unlawful agreement with Delagarza to commit murder in order to obtain insurance proceeds in this case and (2) defendant’s knowledge of such an agreement and the plan to commit murder for such a purpose. See *Crawford*, 458 Mich at 387. Here, evidence of the prior agreement to commit arson with the purpose of obtaining insurance proceeds made the existence of the fact that defendant and Delagarza intentionally entered into an agreement to murder Hernandez—also to acquire insurance proceeds—significantly more probable.

“Proof of motive in a prosecution for murder, although not essential, is always relevant, and evidence of other acts to prove motive is admissible under MRE 404(b)(1).” *People v Rice*, 235 Mich App 429, 440; 597 NW2d 843 (1999) (citations omitted). The evidence regarding the prior conspiracy to commit arson made more probable the fact that defendant’s involvement in the murder was motivated by the collection of insurance proceeds, as in the prior scheme. See *Crawford*, 458 Mich at 387. Additionally, the evidence of the prior conspiracy was highly

⁵ Similarly, MRE 401 provides, “ ‘Relevant evidence’ [is] evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

relevant to whether defendant utilized a common plan, scheme, or system in this case, which, in turn, was relevant to proving the existence of a conspiracy as well as proving defendant's involvement in the murder itself. See *Sabin (After Remand)*, 463 Mich at 61-62. In both instances, defendant approached Delagarza for a "job," informed him that he would be paid from insurance proceeds, and formulated the plan for the commission of the crime. Thus, the two conspiracies shared sufficient common features for the evidence to be relevant to proving the existence of a common plan, scheme, or system. See *id.* at 64-66.

Although defendant claims that the arson-related evidence was irrelevant because she was not the title holder of the torched Maxima and she was not the recipient of the insurance proceeds, there is significant evidence in the record indicating that she was, in fact, involved in the arson and subsequent auto insurance claim, and that she benefitted from the insurance proceeds. Delagarza's testimony as well as other evidence showed that even though Hernandez was involved in the arson conspiracy, defendant executed the plan by soliciting Delazarga's assistance, formulating the plan, creating the cover story, providing bottles for the Molotov cocktail bombs used to commit the crime, relaying the cover story to investigators, and actively participating in the insurance claim following the incident. The insurance proceeds were issued directly to Hernandez, but there was evidence in the record from which one could reasonably infer that defendant benefitted from the proceeds, including, *inter alia*, testimony that defendant and defendant's son were living with Hernandez at the time of the arson, Hernandez's history of providing for defendant financially, and the fact that documents related to the insurance proceeds were found in a briefcase under a bed in the Ambertrace apartment, which included important documents belonging to both Hernandez and defendant. See *Crawford*, 458 Mich at 387. Thus, evidence of the arson was relevant to show defendant's relationship with Delagarza, her motive in committing the crimes, and a common plan, scheme, or system. See MRE 401; MRE 404(b).

Under the third prong of the test, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. See *Sabin*, 463 Mich at 55-56; see also *VanderVliet*, 444 Mich at 74-75 (stating that the trial court must determine "whether the danger of undue prejudice [substantially] outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making decision[s] of this kind under Rule 403.") (quotation marks and citation omitted). As the trial court ruled, this is not an instance where there was "a danger that marginally probative evidence [was] given undue or preemptive weight by the jury." *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001); see also *Crawford*, 458 Mich at 398. As discussed *supra*, evidence concerning the prior conspiracy and arson, which demonstrated the nature of defendant and Delagarza's ongoing conspiratorial relationship, was highly probative given defendant's theory that she had no involvement in the commission of the murder and that Delagarza was blaming her for the murder that he committed. Additionally, the trial court was justified in concluding that there was no indication that the other acts evidence would insert considerations extraneous to the merits of this case. See *People v McGhee*, 268 Mich App 600, 614; 709 NW2d 595 (2005) ("This unfair prejudice refers to the tendency of the proposed evidence to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock.") (quotation marks and citation omitted). And we find no other basis for concluding that the evidence was unfairly prejudicial, especially given the similarity between the acts, the fact that the two conspiracies were relatively close in temporal proximity, and the existence of other evidence corroborating Delagarza's testimony regarding defendant's

involvement in the arson conspiracy.⁶ See *People v Watkins*, 491 Mich 450, 487-488; 818 NW2d 296 (2012) (listing considerations that may lead a court to exclude other act evidence under MRE 403, such as “(1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant’s and the defendant’s testimony.”).

Finally, the trial court provided the following limiting instruction with regard to the prior act evidence to the jury:

You have heard evidence that was introduced to show that the defendant committed a crime of aiding and abetting an arson for which she is not on trial. If you believe this evidence, you must be very careful only to consider it for certain purposes. You may only think about whether the evidence tends to show that the defendant used . . . a plan, system, or a characteristic scheme that she has used before or since, and the nature and extent of defendant’s conspiratorial relationship with Anthony Delagarza.

You must not consider the evidence for any other purpose. For example, you must not decide that it shows the defendant is a bad person or that she’s likely to commit crimes. You must not convict the defendant here because you think she is guilty of other bad conduct. All of the evidence must convince you beyond a reasonable doubt that the defendant committed the alleged crime, or you must find her not guilty.

“A limiting instruction generally suffice[s] to enable the jury to compartmentalize evidence and consider it only for its proper purpose . . . ,” *People v Mardlin*, 487 Mich 609, 629; 790 NW2d 607 (2010) (quotation marks and citation omitted), and we take into account the “efficacy of a limiting instruction in cushioning the prejudicial effect of the evidence,” *Crawford*, 458 Mich at 385 (citation and quotation omitted). We conclude that the trial court’s limiting instruction was effective in mitigating the prejudicial effect of the evidence, especially given the trial court’s express admonition that the jury may not draw a propensity inference from the evidence.

In sum, the trial court did not abuse its discretion in admitting evidence concerning defendant’s prior involvement in the conspiracy to commit arson. *Sabin (After Remand)*, 463 Mich at 67.

IV. CONCLUSION

⁶ For this reason, we reject defendant’s claim that “the lack of reliability of the prior bad acts evidence weighs against a finding that the evidence was probative.”

The trial court did not abuse its discretion in admitting prior act evidence under MRE 404(b).

Affirmed.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Jane E. Markey